

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL KELLY,

Plaintiff-Appellant,

v

CORNELL MITCHELL,

Defendant-Appellee,

and

BILLIE MITCHELL and MICHIGAN
DEPARTMENT OF TREASURY,

Defendants.

UNPUBLISHED

March 8, 2005

No. 250362

Wayne Circuit Court

LC No. 01-135977-CH

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Plaintiff Michael Kelly appeals as of right from a circuit court order granting defendant Cornell Mitchell's motion for sanctions. We remand for factual findings to support the sanction order.

I. Basic Facts And Procedural History

This case arose from the tax sale of property in Detroit belonging to Billie and Cornell Mitchell. According to the complaint, after the Mitchells failed to pay their 1996 taxes on the property, Kelly bought the property at a 1999 tax sale and gave the Mitchells notice of the purchase in November 2000. Kelly filed this action in October 2001 to quiet title.¹ A tax deed for the property was appended to the complaint, but it listed a man named Donald Dauphin, not Kelly, as the purchaser. The complaint does not address this discrepancy, but Kelly averred that Dauphin and Kelly were business partners, and that Dauphin would regularly purchase property at tax sales, then sell his interest to Kelly.

¹ The Department of Treasury was dismissed as a defendant by stipulation in September 2002.

The Mitchells filed a motion for summary disposition. They asserted that apart from the question whether Kelly actually had any interest in the property, the evidence showed that Kelly had not properly served Cornell Mitchell with notice of the tax sale in the manner specified by MCL 211.140(6). That statutory provision, since repealed, allowed the notice to be served by leaving it at the person's "usual place of residence with a member of that person's family of mature age." Billie Mitchell had been served with the notice at her home on Deacon Street. A copy of the notice for Cornell Mitchell was left with her. However, Cornell Mitchell did not live there; he maintained a separate residence on Liebold Street. Although Kelly had done a postal check to confirm that Cornell Mitchell received mail at the Deacon Street address, he admitted that he had no evidence to show that Cornell Mitchell actually resided there.

Kelly responded that he had acquired an interest in the property by a quitclaim deed from Dauphin in October 2001. Kelly argued that he had made reasonable inquiry to determine Cornell Mitchell's post office address, and the post office confirmed that Cornell Mitchell received mail at the Deacon Street address, which gave rise to a reasonable inference that he intended to remain at that address. Kelly further argued that Billie Mitchell, Cornell Mitchell's estranged wife, was likely to have contact with Cornell Mitchell and thus was a proper person to accept service on his behalf.

The trial court granted defendants' motion for summary disposition and determined that Cornell Mitchell had a right to redeem the property. According to other documents in the file, the trial court did not determine whether Cornell Mitchell was properly served with the notice of the tax sale. Rather, it determined that the notice was invalid as a matter of law because it identified Kelly as the holder of the tax deed when (1) he was not and (2) he did not acquire an interest in the property until several months later.

Cornell Mitchell then filed a motion for sanctions pursuant to MCR 2.114 and MCL 600.2591 because (1) Kelly had falsely identified himself on the November 2000 notice as the holder of the tax deed, (2) Kelly had no interest in the property at the time he served defendants with the notice, (3) Kelly had falsely identified himself in the complaint as the purchaser at the tax sale, and (4) there was something suspicious about the fact that Kelly produced a quitclaim deed only after defendants filed a motion for summary disposition.

In Kelly's supplemental response,² he stated that although the Mitchells had questioned his interest in the property, the quitclaim deed showed that he did have such an interest. Kelly argued that he simply made "an innocent mistake" by serving the notice before he acquired an interest in the property; thus, the only issue was whether service of the notice on Cornell Mitchell was proper. Kelly asserted that the complaint was not frivolous, because a good faith argument could have been made that his lack of an interest in the property when notice was served did not render the otherwise sufficient notice of the tax sale defective.

² Kelly's initial response does not appear in the lower court record.

The trial court granted Mitchell's motion, stating, "I think he shouldn't have been brought in. His client went through a lot of expense for, in my view, nothing, and he should be reimbursed."

II. Imposition Of Sanctions

A. Standard Of Review

We review a trial court's decision regarding the imposition of sanctions under MCR 2.114(E) for clear error.³ Likewise, we will not disturb a trial court's finding with regard to whether a claim or defense was frivolous unless that finding is clearly erroneous.⁴

B. Requirement Of Factual Findings

Cornell Mitchell moved for sanctions under both MCR 2.114 and MCL 600.2591, but the basis on which the trial court imposed sanctions is unclear from its ruling. MCR 2.114(E) requires the trial court to impose sanctions if it finds that a pleading was signed in violation of MCR 2.114(D).⁵ MCR 2.114(D)(2) provides that a party's or attorney's signature on a document constitutes a certification that, among other things, "to the best of [the signer's] knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law."⁶ A document signed in violation of MCR 2.114(D) subjects the signer, a represented party, or both to sanctions, including reasonable attorney fees.⁷

"To impose a sanction under MCR 2.114(E), the trial court must first find that an attorney or party has signed a pleading in violation of MCR 2.114(A)-(D)."⁸ Such a determination "depends largely on the facts and circumstances of the claim."⁹ Whether the court rule was violated requires a finding of fact by the trial court.¹⁰ In this case, the trial court did not make any factual findings regarding whether the complaint was signed in violation of the court rule. Accordingly, we remand for a determination whether the trial court imposed sanctions

³ *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

⁴ *State Farm Fire & Cas Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1991).

⁵ *Contel Systems Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990).

⁶ MCR 2.114(D)(2).

⁷ MCR 2.114(E).

⁸ *In re Stafford*, 200 Mich App 41, 42; 503 NW2d 678 (1993).

⁹ *Id.*

¹⁰ *Contel Systems*, *supra* at 711.

pursuant to MCR 2.114(E) and, if so, for a finding regarding whether MCR 2.114(D) was violated.¹¹

In addition, MCL 600.2591 and MCR 2.114(F) subject a party who pleads a frivolous claim to sanctions in the form of costs and attorney fees. An action is frivolous if (1) the plaintiff's primary purpose in filing suit was to harass, embarrass, or injure the defendant; (2) the plaintiff had no reasonable basis to believe that the facts underlying her legal position were in fact true; or (3) the plaintiff's legal position was devoid of arguable legal merit.¹² The relevant issue is thus whether, at the time it was made, the plaintiff's claim had a basis in fact or law or was interposed for an improper purpose.¹³

Again, the trial court did not make a finding regarding whether Kelly's complaint was frivolous. It is unclear from the explanation for its ruling whether the trial court meant that defendants should not have been sued because the claim itself was frivolous when filed or, rather, because the trial court ultimately determined that Kelly was not entitled to relief. The fact that a party does not ultimately prevail does not mean that the party's position was frivolous.¹⁴ To determine whether sanctions were appropriately awarded under MCL 600.2591 and MCR 2.114(F), we remand for a finding regarding whether Kelly's complaint was frivolous when filed.

Remanded for factual findings to support the trial court's award of sanctions. On remand, we direct the trial court to clarify its ruling within twenty-eight days of the release of this opinion. We retain jurisdiction.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen

¹¹ *In re Forfeiture of Cash & Gambling Paraphernalia*, 203 Mich App 69, 73; 512 NW2d 49 (1993).

¹² MCL 600.2591(3)(a).

¹³ MCL 600.2591(3)(a); *In re Costs & Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002).

¹⁴ *Kitchen v Kitchen*, 465 Mich 654, 663; 641 NW2d 245 (2002).